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Conference of the States Parties to the United Nations Convention against Corruption

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Open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption
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Item 5 of the provisional agenda*
Tools and services of the United Nations Office on Drugs and Crime to promote international cooperation

Progress in implementing the mandates of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption

Note by the Secretariat

I. Introduction

1. In its resolution 4/2, entitled "Convening of open-ended intergovernmental expert meetings to enhance international cooperation", the Conference of the States Parties to the United Nations Convention against Corruption decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance, and to convene one such meeting during its fifth session and, prior to that, within existing resources, at least one intersessional meeting.

2. In the same resolution, the Conference also decided that the expert meetings should perform the following functions: (a) assist it in developing cumulative knowledge in the area of international cooperation; (b) assist it in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives and contribute to the implementation of the related provisions of the United Nations Convention against Corruption under the guidance of the Conference; (c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order to strengthen capacities at the national level; (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition; and (e) assist the Conference in identifying the capacity-building needs of States.

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3. At its fifth to seventh sessions, the Conference decided to continue to convene the expert meetings. The first to sixth expert meetings were held annually from 2012 to 2017.

4. The present note has been prepared to inform the seventh expert meeting of the status of implementation of its recommendations and those of the Conference relating to international cooperation. Its purpose is to assist the expert meeting in its deliberations and in determining its future activities.

5. In its resolution 7/1, the Conference of the States Parties called upon States parties that used electronic tools and systems for processing and tracking international requests for assistance to continue to share with the Secretariat, for further dissemination, information on such tools and systems.

6. In the same resolution, the Conference welcomed the recommendations of the sixth open-ended intergovernmental expert meeting to enhance international cooperation under the Convention and decided, inter alia, that the meeting should continue its work by exchanging information on best practices and challenges on:

(a) Common reasons for refusals and delays in mutual legal assistance requests related to corruption offences under the Convention, with a view to proposing innovative solutions;

(b) International cooperation in civil and administrative proceedings related to cases of corruption and possible measures to protect the confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures.

7. Also in the same resolution, the Conference requested the Secretariat to continue, within existing resources, to collect statistics or other relevant information on the use of the Convention as a legal basis for mutual legal assistance, unless a bilateral and regional arrangement applied, and, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings and asset recovery, and to make the information available to the Conference.

8. The sixth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 6 and 7 November 2017, recommended that the Secretariat should continue its work on the analysis of practical challenges arising in the work of central authorities responsible for requests under the Convention against Corruption, with a view to strengthening their effectiveness and efficiency.

9. The sixth expert meeting also recommended that the Secretariat explore the feasibility of developing a practical guide containing considerations relating to how requests for mutual legal assistance of a *de minimis* nature should be handled.

10. The present document has been prepared pursuant to the mandates contained in Conference resolution 7/1 and the recommendations of the sixth expert meeting.

11. It also contains information on technical assistance and other activities of the Secretariat in the field of international cooperation under the Convention.

12. In order to facilitate the implementation of the above-mentioned mandates, on 9 February 2018, the Secretariat sent to States parties a note verbale seeking information on the issues identified above.

13. As at 15 March 2018, 13 States parties had provided responses.

14. The extent of the information provided varied: a few States provided comprehensive information and some provided limited information. All responses received from States parties containing substantive information are summarized below. The Secretariat will continue to analyse the information received from States and will make it available to future expert meetings.

II. Electronic tools and systems for processing and tracking international requests for assistance

15. The present section contains summaries of the responses received from States parties in response to the request contained in the note verbale dated 9 February 2018 for information on the use of electronic tools and systems for processing and tracking international requests for assistance.

Argentina

16. Argentina reported that it used a software programme for criminal and civil cooperation and child abduction cases. The programme, which was custom-made stand-alone software, was called "DAJINGES". While it could be made available to other States parties, it would first need to be upgraded and adapted. Using the software, documents could be identified, the lawyer in charge of a case could be designated, files could be classified, statistics could be created on incoming and outgoing requests and deadlines could be monitored. It also served as an important database and could create statistics on incoming and outgoing requests. However, it did not keep track of the length of time needed to respond to incoming requests and was not able to draft outgoing requests or scan incoming requests in order to work fully on electronic files.

17. Since the software was custom-made for the central authority, it was not possible to specify the cost of implementation. The programme was intuitive and easy to use and only required a short period of training. It could run on standard information technology systems. Argentina stated that the use of the software had produced improvements in terms of the quality of responses to requests and efficiencies in terms of the timely follow-up to requests and that it had facilitated the reporting on international cooperation.

Australia

18. Australia used a custom-built software programme for its database on mutual legal assistance and extradition. Australia was in the process of rebuilding the database, using existing, off-the-shelf, database-building software. The database formed part of a group of the case-management systems that were currently utilized (with templates and records management). The rebuilding of the database was intended to avoid duplication of systems and create greater connectivity between them. The main functionalities of the software were described as capturing information on crime type, status of matters, allocated case officers, assistance sought, next actions required and critical dates (e.g. extradition surrender dates) and whether ministerial consideration was required. Case officers were provided with training upon assignment on the use of the database. The database was largely self-explanatory and did not require extensive training, although refresher courses were also run and encouraged. Australia did not use the existing system to draft outgoing requests; it relied on a series of templates for that purpose.

19. The central authority in Australia operated a paperless system to the extent that hard-copy documents received were scanned and kept in the electronic management system. The database could generate reports and statistics about the progress of cases, numbers of active and closed cases, case numbers allocated per officer and cases by requesting or requested country and crime type. The database did not capture statistics on the time taken to advance requests (although this was being explored in the rebuilding exercise). Owing to the time that had elapsed since it was built, information on costs of implementation and system requirements was not readily available. Such information would be captured during the current redevelopment and would be available for future reports.

20. The quality of requests was maintained through the country's broader knowledge management process, which was kept as a combination of country-specific information to inform requests and templates. They were distinct from the database,

which captured statistical and case status information. However, the system enabled supervisors and managers to assess the status of current requests and prioritize cases accordingly. The system was dependent upon the accuracy of the information included and contained in connection with the relevant case. The software was frequently used to assess and inform the reporting obligations of Australia and to inform discussions on engagement with foreign counterparts (e.g. assessments of other countries).

Austria

21. Austria submitted a comprehensive brochure on the use of information technology applications in the country's justice system (eJustice Austria). In Austria, the main components for case management and electronic communication were currently the Austrian Case Automation and the Electronic Legal Communication systems, which were both custom-made products. Austrian Case Automation currently handled 66 different types of proceedings and reflected the country's strategic approach to developing comprehensive information technology solutions. Austria was also in the process of establishing fully digital case management and electronic communication as part of the strategic initiative "Justiz 3.0". The Austrian Case Automation and the Electronic Legal Communication systems required a certain amount of user training. Both systems integrated word-processing, using metadata from case-management systems to support the drafting of court documents.

22. The ability to scan incoming requests and work solely on electronic files (paperless) was described as one of the top priorities of "Justiz 3.0". Currently, paper documents were scanned at four pilot courts; however, Austria was testing a centralized solution for digitization. Austria stated that the use of the software had produced improvements in terms of the quality of responses to requests and efficiencies in terms of the timely follow-up to requests and that it had facilitated reporting on international cooperation.

Hungary

23. Hungary reported that the case-management system of the prosecution service registered all incoming and outgoing requests for legal assistance. The system, however, did not contain statistical data about the content of the requests, as its purpose was to register and track the execution of the requests. That also meant that it did not have exact data on the frequency of the usage of a particular international legal instrument. Hungary reported that its prosecution service used a normal commercial software for sending requests, with specific security add-ons handled by its information technology section. Requests sent by email or fax would be processed in the same way as those received in hard copy by post.

24. The preparation, reception, registration and processing of international assistance requests in criminal matters was carried out by the police through an integrated case-administration, case-processing and electronic records management system called "Robotzsaru". It was a complex system that was used not only for the handling of requests for legal assistance, but for all types of cases carried out by the criminal organs of the police.

25. The National Defence Service used the Secure Information Exchange Network Application of the European Union Agency for Law Enforcement Cooperation for the sending and receiving of international requests; the system was run by the Hungarian National Police Headquarters (ORFK).

Lithuania

26. Lithuania reported that the Ministry of Justice, as the central authority for mutual legal assistance and extradition cases, did not use a special software programme for managing incoming and outgoing requests for international cooperation. The Ministry used the common electronic system, the so-called "documents management system", which covered all the communications sent and received by the Ministry of Justice, including those in the area of judicial cooperation.

27. The Prosecutor General's Office used several data-management systems. One of them had, among others, a module on international cooperation in criminal matters that was part of a more comprehensive case-management system. It was custom-made software adapted to the needs of the Office. The programme was used to register incoming and outgoing mutual legal assistance and extradition requests, as well other matters related to international cooperation. It was not possible to use the software to draft outgoing requests or to scan incoming requests and work fully on electronic files. The software could be used to create statistics to some extent. However, the existing digital data-management systems within the Prosecutor General's Office were unable to filter the statistics by specific criteria, such as the legal basis for mutual legal assistance or extradition or offences for which assistance had been requested.

28. Lithuania stated that the use of the software had not produced improvements in terms of the quality of responses to requests or efficiencies in terms of the timely follow-up to requests. However, the use of the software had facilitated reporting on international cooperation.

Armenia

29. In Armenia, neither the Prosecutor General's Office nor the Ministry of Justice used special software systems in the field of international cooperation.

Republic of Korea

30. The Republic of Korea responded that it did not use any electronic tools or systems other than universal software applications such as Microsoft Excel.

Norway

31. Norway informed the Secretariat that incoming and outgoing requests for international cooperation were handled using ordinary case-handling systems, both by the Government and by law enforcement agencies. The software was not customized. The main function of the systems was to process and track all cases at the agencies in question. Hence, they were not stand-alone systems. The software made it possible to work fully electronically, but the different systems did not communicate with each other.

III. Common reasons for refusals and delays in mutual legal assistance requests related to corruption offences under the Convention, with a view to proposing innovative solutions

32. The present section contains a summary of the responses received from States parties in response to the request in the note verbale mentioned above for information on best practices and challenges on common reasons for refusals and delays in mutual legal assistance requests related to corruption offences under the Convention, with a view to proposing innovative solutions.

33. Argentina, Australia, Denmark, Hungary, Kuwait, Norway and the Republic of Korea reported that reasons for delays in responding to mutual legal assistance requests were related to the incompleteness of the requests, insufficient supporting materials provided by the requesting State and a lack of clarity in the submitted information. Examples included unclear descriptions of the underlying criminal acts (Hungary) or insufficient description of the relevant facts necessary to enable the issuance of search warrants (Republic of Korea). Those deficiencies often resulted in the return of the requests to requesting States in order for the necessary information to be supplied. Lithuania also mentioned that a common ground for refusal to execute requests had been non-compliance with the form and content of requests required by international treaties.

34. Hungary and Norway listed national security concerns as grounds for refusal to provide mutual legal assistance. Additionally, Norway listed the risks of violation of its sovereignty, public policy or other significant interests as reasons for refusal.

35. Lithuania and Norway reported that the absence of dual criminality was also a common ground for refusal.

36. Lithuania listed the expiration of applicable statutes of limitation as a ground for refusing to execute mutual legal assistance requests.

37. Australia noted that, where the requested assistance would interfere with an Australian investigation or prosecution, the Australian authorities could refuse to provide or delay the provision of the assistance or provide it only under certain conditions. For example, if original material was sought from an executing agency, that agency could provide copies of the material and hold the original material until the Australian prosecution had been concluded. If providing information to the requesting State would expose Australia's investigation and hinder prosecution, the Australian executing agency might delay or decline to provide the assistance.

38. Australia stressed that the nature or severity of punishment was another obstacle that had hindered its ability to provide international cooperation in certain cases. Under the Mutual Assistance in Criminal Matters Act of 1987, the Attorney-General of Australia or his/her representative generally had to refuse to provide assistance if a person had been arrested or detained on suspicion of having committed, been charged with or convicted of an offence for which the death penalty could be applied. An exception was when the foreign country provided an undertaking that the death penalty would not be imposed or, if the death penalty was imposed, that it would not be carried out.

39. Australia highlighted that the biggest challenge to its ability to respond to requests was managing the expectations of requesting States, as well as managing competing priorities with finite resources. Lithuania also reported that delays were usually caused by the extent of the procedural actions requested and the high volume of information requested.

40. With regard to innovative solutions, Australia, Hungary, Norway and the Republic of Korea suggested that preliminary informal contacts between the requesting and requested States could be used to minimize delays and solve problems related to the content of mutual legal assistance requests and to insufficient information.

41. In that regard, Australia noted that it had maintained an extensive liaison network to ensure proper consultation with foreign jurisdictions. In addition to liaising with foreign central authorities to monitor outstanding requests, the Attorney-General's Department of Australia could assist foreign countries in preparing extradition and mutual legal assistance requests. The Department also maintained a website with extensive information on international cooperation, including a detailed description of the procedure for executing incoming and outgoing requests, statistics, links to relevant legislation and treaties and a checklist for preparing a mutual legal assistance request for Australia. It also provided technical and capacity-building assistance to countries in the Pacific region and in South-East Asia in the area of international cooperation in criminal matters. At the law enforcement level, the Australian Federal Police had an extensive international network, with officers posted across the world. The network provided police-level cooperation and assistance, as well as liaison support for extradition and mutual legal assistance requests to and from Australia. Australia suggested that those measures could avoid delays in the processing or refusals of mutual legal assistance requests.

42. Argentina suggested that the creation of a website with information on the applicable treaties and mutual legal assistance and extradition templates could be a useful tool that would allow requesting States to appropriately satisfy the requirements. Norway also mentioned that the use of a standardized template for sending requests could be useful.

43. Argentina also suggested conducting additional capacity-building activities to enhance the use of the Convention as a legal basis for extradition and mutual legal assistance. Such activities could increase awareness among the practitioners regarding the use of the Convention as a legal basis.

IV. International cooperation in civil and administrative proceedings related to cases of corruption and possible measures to protect the confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures

44. The present section contains a summary of the responses received from States parties in response to the request in the note verbale mentioned above for information on best practices and challenges on international cooperation in civil and administrative proceedings related to cases of corruption and suggestions for possible measures to protect the confidentiality of the information requested for the purposes of civil and administrative proceedings related to cases of corruption in the requesting country, where the relevant matter was addressed by criminal proceedings in the requested country.[1]

45. Argentina, Denmark and Norway reported that they had limited or no experience in international cooperation in civil and administrative proceedings related to cases of corruption.

46. Australia and Romania highlighted that, based on their approaches to mutual legal assistance, assistance could be provided only with regard to criminal measures.

47. Lithuania reported that it could provide assistance in administrative matters when the underlying act was subject to administrative punishment only and where it was impossible to apply criminal proceedings.

48. On the other hand, Kuwait noted that there had been no obstacles in its legal system to providing assistance in civil and administrative measures. Argentina also reported the same with regard to civil measures.

49. With regard to specific suggestions on measures to protect the confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures, the Republic of Korea recommended making confidentiality an explicit requirement when submitting the request. Kuwait underscored that, in order to protect the confidentiality of information provided in the context of assistance in criminal civil and administrative procedures, it would be appropriate to coordinate and consult between the parties involved. Kuwait also suggested that a procedural guideline could be developed containing the rules and procedures of States parties to be followed to strengthen the protection of the confidentiality of information requested for the purposes of civil and administrative proceedings related to cases of corruption.

V. Use of the Convention as a legal basis for mutual legal assistance, unless a bilateral and regional arrangement applies, and, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings and asset recovery

50. The present section contains a summary of the responses received from States parties in response to the request in the note verbale mentioned above for information,

[1] For more information on this issue, see document CAC/COSP/2017/2 and section II of document CAC/COSP/EG.1/2017/2.

including statistics and cases, on the use of the Convention as a legal basis for mutual legal assistance and, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings.

51. Australia, Austria, Denmark, Hungary, Lithuania and the Republic of Korea indicated that they had not kept statistical information on the use of the Convention as a legal basis for mutual legal assistance requests. Australia reported that specifying the Convention as a legal basis for requests had been an element considered as part of the redevelopment of the Australian database for mutual legal assistance. Armenia highlighted that it had not received or sent any mutual legal assistance requests under the Convention.

52. At the same time, Kuwait and Lithuania indicated in their responses that the Convention could and would be used as a legal basis when necessary, including in civil and administrative matters.

53. Argentina reported that, according to its information system, which had been introduced in 2010, the Convention was used as a legal basis in 20 per cent of mutual legal assistance requests.

54. Romania recorded the use of the Convention as a legal basis in 13 active mutual legal assistance requests and 4 passive mutual legal assistance requests in 2017; 5 active mutual legal assistance requests and 3 passive mutual legal assistance requests in 2016; and 13 active mutual legal assistance requests and 3 passive mutual legal assistance requests in 2015.

VI. Practical challenges arising in the work of central authorities responsible for requests under the United Nations Convention against Corruption

55. The present section contains a summary of the responses received from States parties in response to the request in the above-mentioned note verbale for information on practical challenges arising in the work of their central authorities responsible for requests under the Convention against Corruption.

56. The information received from States on practical challenges arising in the work of their central authorities to some extent echoed the information provided in regard to the common reasons for refusals and delays in mutual legal assistance as summarized under section III above.

57. Argentina, Hungary, Lithuania and the Republic of Korea reported that differences in legal systems presented a challenge for the operations of their central authorities.

58. Challenges related to the translation of documentation and to language barriers were reported by Argentina, Hungary and Lithuania.

59. Argentina and Kuwait highlighted incomplete requests, in both form and substance, as a challenge.

60. Argentina also noted that the large amount of information received by its central authority on a daily basis was a challenge.

61. Possible suggestions for addressing relevant challenges included having prior contacts before the submission of requests (Hungary) and creating guidelines on providing and requesting mutual legal assistance based on the Convention (Kuwait).

62. At the same time, Norway and Romania reported no particular challenges in the work of their central authorities responsible for mutual legal assistance requests.

VII. Considerations relating to how requests for mutual legal assistance of a *de minimis* nature should be handled

63. The present section contains a summary of the responses received from States parties in response to the request in the above-mentioned note verbale for information on their relevant authorities' approaches and practices to the handling of mutual legal assistance requests of a *de minimis* nature.

64. Argentina, Hungary and the Republic of Korea reported that they had not applied *de minimis* criteria to incoming mutual legal assistance requests.

65. Denmark, Norway and Lithuania reported that they had no specific rules or experiences in handling mutual legal assistance requests of a *de minimis* nature. Lithuania highlighted that, in practice, all requests had been treated equally.

66. On the other hand, Australia reported that section 8 of its Mutual Assistance in Criminal Matters Act had provided for a number of grounds of refusal, including *de minimis* considerations. The Australian International Crime Cooperation Central Authority had an established process for considering and responding to incoming mutual legal assistance requests, taking into account all the circumstances of each case and the resources available to respond. If a request was refused, the Authority provided reasons to the requesting State to assist in consideration of further steps for the particular case and to inform future requests.

VIII. Online directory of competent national authorities

67. The sixth expert meeting had recommended that the Secretariat continue its work on maintaining the online directory of competent national authorities (available at www.unodc.org/compauth_uncac/en/index.html).

68. Further to that recommendation, the Secretariat continued to update the online directory.

69. As of March 2018, the directory contained information on the following:

(a) Central authorities for mutual legal assistance in 129 States parties;

(b) Prevention authorities in 112 States parties;

(c) Asset recovery focal points in 80 States parties;

(d) Central authorities on extradition in 23 States parties;

(e) Focal points for international cooperation in the use of civil and administrative proceedings in 32 States parties.

IX. Technical assistance and other activities relevant to international cooperation under the United Nations Convention against Corruption

70. The United Nations Office on Drugs and Crime (UNODC) continued to provide capacity-building and advisory services at the regional and national levels and to participate in meetings and conferences aimed at coordinating international cooperation among States parties. Furthermore, UNODC continued to provide technical assistance in relation to asset recovery, which frequently overlapped with technical assistance needs related to international cooperation based on the Convention. A detailed description of those technical assistance activities is contained in the note by the Secretariat on progress made in the implementation of asset recovery mandates (CAC/COSP/WG.2/2018/2).

71. Representatives of UNODC participated in the third Group of 20 Anti-Corruption Working Group meeting, held in Vienna in September 2017, and presented

a paper entitled "Practical trends and challenges in international cooperation in corruption matters: observations from the United Nations Convention against Corruption Implementation Review Mechanism".

72. The information contained in the paper built on that collected from 160 country reviews completed in the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and focused on several practical issues related to the implementation of chapter IV of the Convention (International cooperation), including domestic legal framework, legal basis for international cooperation and use of the Convention for that purpose, central authorities and regulated time frames and simplified procedures and consultations in international cooperation.

73. The paper indicated a trend towards a convergence among countries belonging to different legal traditions, languages or regions.

74. Despite the fact that many countries had in place a wide array of normative and practical tools to meet the requirements of the Convention, a number of difficulties were identified at the operational level, including inadequate domestic legal frameworks, lack of awareness regarding the opportunities that the Convention and other international instruments provided to domestic practitioners, problems in domestic inter-agency cooperation and inadequate resources provided to central authorities and other domestic agencies tasked with different mandates related to international cooperation. The need to further enhance their capacities was also identified.

75. The paper also highlighted that the challenges had been identified in developing countries and countries with economies in transition, which could be seen as an indication that capacity-building support and awareness-raising and increased exposure to networks and forums where international cooperation was discussed could assist in addressing some of those shortcomings.

76. In October 2017, UNODC organized a regional workshop on international cooperation in financial investigations, money-laundering and recovery of assets for law enforcement, prosecutors and financial intelligence units from six countries in South Asia. It was held in Colombo. The workshop was organized pursuant to the request of the participating countries and focused on the recommendations stemming from the first cycle of the Implementation Review Mechanism. The main goals of the workshop were to assist in enhancing the capacity of law enforcement agencies and financial intelligence agencies and to enable mutual assistance in legal matters in the region, including through channels of informal cooperation.

77. In February 2018, UNODC participated in the regional conference on the prevention and fight against terrorism and the proliferation of weapons of mass destruction and its financing in Latin America and the Caribbean, which was held in Panama City. During the event, the links between terrorism financing, organized crime, corruption and money-laundering were highlighted and the importance of using the Convention against Corruption and the United Nations Convention against Transnational Organized Crime as legal bases for mutual legal assistance requests was emphasized.

X. Conclusions and recommendations

78. While the Secretariat continues to collect additional information from States parties pursuant to the mandates contained in Conference resolution 7/1 and the recommendations of the expert meeting, at the time of the preparation of the present report, the majority of States parties had not yet provided the information requested.

79. The seventh expert meeting may nevertheless wish to provide further guidance to the Secretariat on whether certain issues highlighted in the responses already received deserve additional consideration.

80. In particular, the expert meeting may wish to consider whether the development of standardized templates for mutual legal assistance requests, as well as the development of guidelines on providing and receiving mutual legal assistance based on the Convention, should be further considered.

81. The expert meeting may also wish to consider whether additional actions should be undertaken by the Secretariat to ensure the implementation of the relevant mandates.